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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,640	02/07/2001	Babak Nemati		4426
75	10/16/2003		EXAMINER	
Suzannah K Sundby			HAYES, MICHAEL J	
Jacobson Holm 400 Seventh St			ART UNIT PAPER NUMBER	
Washington, D	ashington, DC 20004-2201		3763	w/
			DATE MAILED: 10/16/2003	/5

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
Advisory Action	09/777,640	NEMATI, BABAK	O)
Advisory Action	Examiner	Art Unit	
	Michael J Hayes	3763	
The MAILING DATE of this communicati	ion appears on the cover sheet wi	th the correspondence address	;
THE REPLY FILED 11 September 2003 FAILS T Therefore, further action by the applicant is requir final rejection under 37 CFR 1.113 may only be e condition for allowance; (2) a timely filed Notice of Examination (RCE) in compliance with 37 CFR 1.	ed to avoid abandonment of this ither: (1) a timely filed amendmer f Appeal (with appeal fee); or (3)	application. A proper reply to nt which places the application	a in
PERIOD	FOR REPLY [check either a) or b	)]	
a) $\square$ The period for reply expires $\underline{4}$ months from the m			
b) The period for reply expires on: (1) the mailing dat no event, however, will the statutory period for rep ONLY CHECK THIS BOX WHEN THE FIRST RE 706.07(f).	ly expire later than SIX MONTHS from th	e mailing date of the final rejection.	
Extensions of time may be obtained under 37 CFR 1.130 fee have been filed is the date for purposes of determining the fee under 37 CFR 1.17(a) is calculated from: (1) the expiration (2) as set forth in (b) above, if checked. Any reply received be timely filed, may reduce any earned patent term adjustment.	e period of extension and the correspond in date of the shortened statutory period f by the Office later than three months after	ling amount of the fee. The appropriation for reply originally set in the final Office.	ate extension ce action; or
1. A Notice of Appeal was filed on Ap 37 CFR 1.192(a), or any extension thereof	pellant's Brief must be filed within (37 CFR 1.191(d)), to avoid dism	the period set forth in issal of the appeal.	
2. The proposed amendment(s) will not be en	itered because:		
(a) ⊠ they raise new issues that would requi	re further consideration and/or se	earch (see NOTE below);	
(b) they raise the issue of new matter (see	e Note below);		
(c) they are not deemed to place the appliance issues for appeal; and/or	ication in better form for appeal b	y materially reducing or simpli	fying the
(d)  they present additional claims without	canceling a corresponding numb	per of finally rejected claims.	
NOTE: See Continuation Sheet.			
3. Applicant's reply has overcome the following	ng rejection(s):		
4. Newly proposed or amended claim(s) canceling the non-allowable claim(s).	_ would be allowable if submitted	in a separate, timely filed ame	endment
5.⊠ The a)☐ affidavit, b)☐ exhibit, or c)☐ required application in condition for allowance because		n considered but does NOT pl	ace the
6. The affidavit or exhibit will NOT be consider raised by the Examiner in the final rejection		LELY to issues which were ne	ewly .
7. For purposes of Appeal, the proposed ame explanation of how the new or amended c			an
The status of the claim(s) is (or will be) as	follows:		
Claim(s) allowed:			
Claim(s) objected to:			
Claim(s) rejected:		•	

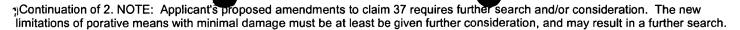
Michael J Hayes Primary Examiner Art Unit: 3763

10. Other: \_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. The proposed drawing correction filed on \_\_\_\_ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_



Some notes regarding the proposed amendment: with porative means for bypassing recited in independent claim 37, the dependent limitations of abrading, acoustic pressure, optical pressure, temperature gradient, concentration gradient, tissue stripping, and laser ablation do not appear to fall within Applicant's definition of porative bypassing means (See claim 70 and Applicant's specification pg. 19, 2<sup>nd</sup> paragraph). It is not clear whether Applicant's recitation of "delivery means" in section (c) referrs to means for delivering agent or means for delivering light.

Applicant argues that Martinez does not show bypassing barrier with minimal tissue damage. Applicant points out that Martinez must make an incision, but Applicant's porative means also includes abrading (claim 56) and tissue stripping (claim 63). Applicant has not explicitly defined "minimal tissue damage" in the original specification which would allow him to rely on a special definition. The phrase is not adequately defined to establish the metes and bounds of the invention.

Applicant's declaration argues against the modification of the invention of Chan as one device as opposed to two separate devices. Applicant has not recited any structural limitation that relates the combination of the two devices. Combining two separate elements into one element is an obvious modification. See Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

Applicant's declaration concerning the use of the claimed apparatus are relevant to a method of using the apparatus. The apparatus claims read on the prior art because the prior art is capable of performing the recited functions.